IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 631 OF 2005

Smt. Shantabai Ganpati Awati ... Appellant

V/s

Shri Gopal Vishwambhar Salunke ... Respondent

Ms. Leena Patil for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 27.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Sangli, dated 27.1.1984 dismissing the suit of the plaintiff for declaration to the effect that the sale deed dated 3.3.1997 was obtained by fraud and without consideration and, therefore, not binding on the plaintiff.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit alleging that the suit house being C.T.S. No. 546 at Dakshin Shivaji Nagar, Dist. Sangli, admeasuring 77.8 sq.mtrs. was owned and possessed by her as it was purchased by her husband for a consideration of Rs.851/-. After the purchase, she constructed two rooms. Part of the property was tenanted. The western side room was given in possession of one Hawaldar Shaikh on mortgage deed for Rs.700/-. That amount was given by the defendant to the plaintiff. The plaintiff had also a document of the defendant on the same amount and on that basis she gave that room to the defendant. There was fiduciary relationship between the parties. It is alleged that the defendant was in difficulty in his dairy business and, therefore, he decided to get loan from the Bank. The defendant requested the plaintiff to be the guarantor for his loan and because of close relationship, even though she was not member of the bank, she decided to accept the guarantorship. The defendant got sanctioned the shares in the name of the plaintiff and after that the loan was sanctioned to the defendant and at that time the plaintiff made some thumb impressions on different documents. Subsequently, when she issued notice to the tenant on 29.1.1980, the defendant informed that on

3.3.1977 he had purchased the property from the plaintiff when she came to know about the fact that she was subjected to fraud by the defendant. Hence the suit was filed.

Defendant contested the suit on various grounds inter-alia submitting that the property was sold to him by the plaintiff for due consideration of Rs.5,000/- as she was in need of the amount and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove that the impugned sale deed was without consideration and was obtained by the defendant by playing fraud and, as such, the suit for declaration came to be dismissed.

The appeal was carried to the District Court, Sangli. The learned Addl. District Judge, after hearing both parties, concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

5. Initially it must be noted that there is absolutely

no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that there were sufficient circumstances brought on record which would raise suspicion regarding the suit transaction between the parties. However, in my considered view, mere suspicious circumstance would not be sufficient to jump to the conclusion that the plaintiff was subjected to fraud and the registered sale deed was without consideration and was obtained by fraud in absence of cogent and conclusive evidence. Therefore, both the Courts below have concurrently recorded the findings to the effect that the plaintiff has failed to prove that she is subjected to fraud and without consideration and, as such she was non-suited. There is no reason why the concurrent findings of both the Courts below should be interfered with and, as such, the appeal deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs.

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